DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council; Subcommittee on Encryption, Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Encryption (PECSENC) will be held on September 18, 1998. The initial open session will convene at 9:00 a.m. at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The initial open session is scheduled to adjourn at 12:00 p.m. The closed session will convene in Room 4832. The PECSENC will reconvene in open session at 3:00 p.m. in Room 4832. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Issue briefings.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

Open Session

6. Issue briefing.
7. Reports by working groups.
8. Open discussion.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved May 7, 1998, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: August 26, 1998.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–23578 Filed 9–1–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On April 7, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its antidumping duty administrative review of the antidumping duty order on carbon steel wire rope from Mexico (63 FR 16967). This review covers one manufacturer/exporter of the subject merchandise to the United States, Aceros Camesa S.A. de C.V. (Camesa), and the period of March 1, 1996 through February 28, 1997. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Camesa and from the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the petitioner). We have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Joanna M. Gabryszewski, Laurel LaCivita, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0780, (202) 482–4236, or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provision effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 353 (April 1, 1996).

Background

On April 7, 1998, the Department published in the **Federal Register** the preliminary results of the review of the antidumping duty order on carbon steel wire rope from Mexico (63 FR 16967). On May 7, 1998, we received comments from the petitioner and Camesa. The petitioner and Camesa submitted rebuttal comments on May 15, 1998. Both parties presented their comments in a hearing held on May 28, 1998.

The Department has now completed this antidumping duty administrative review in accordance with section 751(b) of the Act.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Excluded from this review is stainless steel wire rope, which is classifiable under HTS subheading 7312.10.6000, and all forms of stranded wire, with the following exception.

Based on the final affirmative determination of circumvention of antidumping duty order, 60 **Federal Register** 10831 (February 28, 1995), the Department has determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. Such merchandise is currently classifiable under subheading 7312.10.3020 of the HTS.

Although HTS subheadings are provided for convenience and for Customs purposes, our own written description of the scope of this review remains dispositive.

This review covers one manufacturer/exporter, Camesa, and the period March 1, 1996 through February 28, 1997.

Model Match Methodology

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir.) (*CEMEX*). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section

771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for normal value (NV) if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this segment of the proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received case and rebuttal briefs from the petitioner and from Camesa.

Comment 1: Whether Camesa's U.S. Sale is a Bona Fide Transaction

The petitioner contends that the timing and nature of Camesa's one sale to the United States during the period of review (POR) indicates that it was not a bona fide transaction.

The petitioner asserts that although Camesa's sale of subject product was not overtly fraudulent, circumstances surrounding the sale were contrived under controlled conditions. Petitioner contends the price of the product was arranged to ensure that the sale would yield little or no dumping margin and serve as the basis for an administrative review and adjustment of the existing antidumping duty deposit requirement.

Petitioner argues that, given that Camesa had not sold carbon steel wire rope to the United States in over three years, and that the U.S. customer purchased subject product so late in the POR and was willing to pay a 111.68 percent duty indicates that this sale was orchestrated by Camesa and does not represent typical commercial trade. Petitioner further contends that the price of the sale was calculated so as to closely coordinate with home market sales of identical product during the same period. Consequently, the petitioner argues, the Department must disregard this sale and determine that no proper basis existed for an administrative review of the March 1, 1996 through February 28, 1997 period.

Camesa contends that the petitioner has not provided any evidence that the sale in question was not genuine, or that the prices were aberrational or atypical compared to other sales in the U.S. market. Camesa points out that the petitioner has not demonstrated that Camesa's U.S. customer had a financial interest in the outcome of this antidumping duty review. Camesa argues that the petitioner's arguments are based on the speculation that the U.S. sale must have been contrived because it occurred so late in the review period and results in a margin that the petitioner does not like.

Camesa further claims that there is no statutory or regulatory basis for excluding any U.S. sales from an administrative review. Camesa notes that the Department set forth its understanding that section 751(a)(2)(A) of the Act requires the Department to include all U.S. sales in the calculation of dumping margins in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding,* 61 FR 57629, 57639 (November 7, 1996) (*TRBs*). Therefore, Camesa contends, its one U.S. sale should be included in this review.

DOC Position

We agree with Camesa. Section 751(a)(2)(A) of the Act requires the Department to determine the NV and export price (or constructed export price) of each entry of the subject merchandise and to calculate the dumping margin for each entry during the POR. We stated in *TRBs* that section 751(a)(2)(A) of the Act requires us to analyze all U.S. sales within the review period. As the petitioner notes in its case brief, the sale in question was made between a foreign company and the first unaffiliated purchaser in the United States, during the POR. The petitioner does not claim that this sale was fraudulent and has not provided any evidence, only speculative allegations, that the sale was not a bona fide transaction. Therefore, we have continued to include this sale in our margin calculation in these final results of review.

Comment 2: Whether Camesa's Home Market Sales Constitute a Fictitious Market

The petitioner contends that the home market sales which served as the basis for the price comparison constitute a fictitious market. The petitioner claims that section 773(a)(2) of the Act and section 353.43(b) of the Department's regulations require the Department to disregard and/or reject any pretended sale or sales intended to establish a fictitious market in determining NV.

The petitioner alleges that the data provided by Camesa regarding the home market sales on which NV is based demonstrate a price movement vis-a-vis different forms of the product subject to the order which is indicative of a fictitious market. Specifically, the petitioner states that the timing and isolated nature of one customer-specific discount was contrived to lower the home market price, thereby reducing or eliminating the dumping margin. Therefore, the petitioner asserts, the price manipulation evident in these sales constitutes the very type of price movement which the Department has determined constitutes the basis for a fictitious market determination.

Camesa argues that there is no evidence to support the petitioner's claim of a fictitious market. Camesa notes that under the Department's established practice, a ''fictitious market'' may be found when the evidence shows that the trends in prices for comparison products: (1) are moving in a different way from the trends in prices for non-comparison products, and (2) would have the effect of reducing the dumping margins. See the preamble to *Antidumping Duties; Countervailing Duties; Final Rule; Final Rule*, 62 FR 27296, 27357 (May 19, 1997). Camesa claims that the home market prices for the comparison product in the month of the U.S. sale were at relatively high levels both in comparison to other sales of the same product and in comparison to the trends in prices of non-comparison products. Thus, the price trends for the comparison product had the effect of raising, not lowering, the dumping margins.

Furthermore, Camesa argues that an analysis of the timing of its home market sales and discounts reveals that these sales and discounts were not unusual and were within the range of Camesa's normal sales practices. Camesa concludes, therefore, there is no evidence to support the petitioner's claim that these sales constitute a fictitious market.

DOC Position

The petitioner failed to raise its fictitious market allegation until the filing of its case brief following the preliminary results of this review. Therefore, the petitioner's allegation was untimely filed and, consequently, does not warrant determining that Camesa's home market sales constitute a fictitious market.

As we explained in our *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea*, 62 FR 39809, 39822 (July 25, 1997), a fictitious market analysis is extraordinary. The preamble to *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27357 (May 19, 1997)(the Departments's regulations), implementing the URAA, states that the Department typically does not engage in a fictitious market analyses under section 773(a)(2) of the Act, or a variety of other analyses called for by section 773, ''unless it receives a timely and adequately substantiated allegation from a party.'' (*See Tubeless Steel Disc Wheels from Brazil; Final Results of Antidumping duty Administrative Review*, 56 FR 14083 (April 15, 1991); *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 32095, 23096 (June 8, 1993) (*Mexican Cooking Ware*).) The various provisions of section 773, particularly section 773(a)(2), ''call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard antidumping analysis.'' *See* 62 FR 27296, 27357, (May 19, 1997). The Department must determine, as a threshold matter, whether such an analysis is warranted based upon the adequacy of the allegation. *See Mexican Cooking Ware; Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 28551, 28555 (May 14, 1993).

The untimely nature of the petitioner's allegation during this review prevented the Department from making this threshold determination at an appropriate point in the proceeding. Therefore, we reject petitioner's fictitious market allegation.

Comment 3: The Date of Sale for Home Market Observation 527

The petitioner argues that the Department must reject the reported date of sale for home market observation (OBS) 527 since Camesa used the invoice date as the date of sale whereas, during verification, the Department discovered a facsimile transmission from Camesa to its home market customer indicating that the material terms of sale for OBS 527 had been settled three months before the date of invoice. The petitioner contends that the Department should establish the date of the facsimile transmission as the date of sale for OBS 527, since it corresponds to the date of the last known changes in the material terms of sale. As a result, the petitioner argues, OBS 527 should not be used as a basis for calculating NV, since the earlier date of sale is outside of the contemporaneous window period. The petitioner further alleges that the remaining sales of the foreign like product sold in the home market during the month of the U.S. sale, constitute an unacceptably small quantity of home market sales upon which to base NV. Therefore, the petitioner argues, the Department should base NV on contemporaneous home market sales of other carbon steel wire rope products of the same general class or kind as the subject merchandise sold by Camesa in the United States, or, alternatively, on sales of the foreign like product made prior to the month of the U.S. sale.

Camesa asserts that section 351.401 of the Department's regulations stipulates that the date of sale should be based on the date of invoice and that the preamble to this new regulation also expresses a ''preference for using a single date of sale for each respondent, rather than a different date of sale for each sale.'' (*See* 62 FR 27296, 27348). Furthermore, Camesa notes that the preamble to the Department's regulations also indicates that the Department will depart from using the date of invoice as the date of sale when ''the material terms of sale usually are established on some date other than the date of invoice.'' (*See* 62 FR 27296, 27349.) Camesa finally points to the requirement in the Department's questionnaire that respondents use a uniform date of sale methodology for all sales.

Camesa notes that, as a general matter, the prices for the home market sales reported during the POR were fixed based on the price lists in effect when the invoice was generated. Camesa explains that it used the date of invoice as the date of sale for all of the home market transactions reported in this review. Finally, Camesa explains that the facsimile transmission in question establishes neither the price nor quantity of the sale and consequently cannot be used as the basis of the date of sale.

DOC Position

We agree with Camesa. The Department's verification report established that the purpose of the facsimile transmission petitioner references was to grant a discount, and not to establish the price, quantity or other terms of the sale. As Camesa explained above, the new regulations require the use of single, uniform date of sale throughout each response, rather than a different date of sale for each sale. Although this review is not governed by the new regulations, the new regulations serve as a restatement of the Department's interpretation of the requirements of the Act as amended by URAA. *See* section 351.701 of the Department's regulations. Therefore, the Department will use the date of invoice as the date of sale. Section 351.401(i) of Department's regulations establishes that normally, the date of sale is the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Section 351.401(i) also states that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Camesa prepared its response on a consistent basis, using the invoice date as the date of sale. There is no evidence that any date other than the invoice date should be considered as the date on which Camesa established the material terms of sale in the course of its business. The verification report did not identify any discrepancies with respect to the date of sale for this transaction. Therefore, for the purposes of these final results of review, we will accept Camesa's verified invoice date as the date of sale.

Comment 4: Duty Drawback

The petitioner argues that Camesa is not entitled to a duty drawback adjustment under section 772(c)(1)(B) of the Act because Camesa has failed to satisfy the Department's two-pronged test to receive duty drawback. (*See Far East Machinery Co.* v. *United States*, 12 CIT 972, 974 (1988). Petitioner states that the first prong of the test requires Camesa to demonstrate that the import duty and the rebate received under the duty drawback program must be directly

linked to, and dependent upon, one another. The second prong requires that Camesa demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product, *Id*.

Petitioner argues that Camesa failed to satisfy the first prong because under PITEX, Mexico's duty drawback program, Camesa did not actually pay the import duty as petitioner claims is required by the Act. According to the petitioner, duty drawback adjustments ''may only be made where imports [sic] duties are *actually paid and rebated*.'' Petitioner's case brief at 19 (emphasis in original), citing *Far East Machinery,* 12 CIT at 976, quoting *Huffy Corporation* v. *United States,* 10 CIT 214 (1986).

Moreover, petitioner argues that since Camesa did not pay any import duties, it has failed to establish that such duties were paid for those raw materials that were used to produce steel wire rope sold in the home market but not paid on wire rope products exported. Petitioner also asserts that Camesa did not pay duties on a quantity of imported rod substantially greater than the quantity of its documented exports.

Camesa contends that the petitioner incorrectly characterizes section 772(c)(1)(B) of the Act and in a way that is directly inconsistent with the plain language of the Act. Camesa also disputes petitioner's allegation that they did not meet the second prong, *i.e.,* did not export a sufficient quantity of finished products to account for its amount of imports. Camesa argues that petitioner ignored the vast majority of the steel products it exports—steel wire, steel wire strand, and electro-mechanical cable—which, like steel wire rope, are produced from imported steel wire rod. Camesa notes that the total exports of these products were substantially more than the quantity of steel wire rod imported by Camesa.

DOC Position

We disagree with the petitioner. Section 772(c)(1)(B) of the Act explicitly provides for the Department's grant of a duty drawback adjustment when import duties ''imposed by the country of exportation which have been rebated, or *which have not been collected,* by reason of the exportation of the subject product to the United States''. *Id*. (emphasis added).

Petitioner's argument that Camesa has to actually pay and receive a rebate in order to qualify for duty drawback adjustment is contrary to the plain language of the statute and the Department's long-established practice. ''Section 772(c)(1)(B) of the Act provides for adjustment for duty drawback on import duties which have been rebated (or which have not been collected) by reason of exportation * * *.'' *Final Determination of Sales Less Than Fair Value: Stainless Steel Wire Rod from Korea,* 63 FR 40404, 40415 (July 29, 1998). *See also Certain Welded Stainless Steel Pipe from Taiwan; Final Results of Administrative Review,* 63 FR 38382, 38389 (July 16, 1998); *Certain Welded Carbon Steel Pipes and Tubes from India; Final Results of New Shipper Antidumping Duty Administrative Review* (*Indian Pipe*), 62 FR 47632, 47635 (September 10, 1997).

The Department will grant a duty drawback adjustment if we determine: 1) that the import duty and rebate are directly linked to, and dependent upon, one another; and 2) that imported raw materials are sufficient to account for the duty drawback received on the exports of the manufactured product. (*See Far East Machinery,* 12 CIT at 974.)

However, the Department has never established a strict prerequisite that import duties must actually be paid and subsequently rebated in order for there to be the necessary link justifying an adjustment to the U.S. starting price. Nor have the courts established such a requirement. It is true, as petitioner notes, that the Court of International Trade stated in *Far East Machinery* that payment of import duties is a ''prerequisite to receipt of an export rebate'' to qualify for an adjustment. *Far East Machinery,* 12 CIT at 976. However, petitioner has taken the Court's discussion of this issue out of context. In *Far East Machinery,* the respondent had actually paid duties upon importing the input and had received some amount of rebate on exporting the subject merchandise. The question in that case only concerned whether the government drawback program at issue established the necessary link between actual payment of the duties and receipt of the rebate. *See id.; see also, Du Pont de Nemours & Co.* v. *United States,* 841 F. Supp. 1237, 1242–43 (CIT, 1993); *Huffy Corp., supra.*

In this case, under the PITEX program, the Mexican government has effectively suspended collection of duties from Camesa on imported steel wire rod contingent upon Camesa's later exporting merchandise containing an equivalent amount of steel. The Department has reviewed this type of program before. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review,* 62 FR 1970, 1976 (January 7, 1997) (Brazilian duty drawback program suspends the payment of taxes or duties that ordinarily would have been due upon exportation); *Extruded Ruber Thread from Malaysia; Final Results of Antidumping Administrative Review,* 62 FR 33588, 33598–99 (June 20, 1997) (import duties not collected when subject merchandise incorporating those imported goods were exported).

Therefore, in cases where the import duty is not collected, the first prong then becomes whether ''import duties were actually not collected by reason of the exportation of the subject merchandise to the United States.'' This type of program falls within the express language of section 772 (c)(1)(B). *See Indian Pipe,* at 47632, 47635. The Department determines that Camesa has met the requirements of the first prong.

The Department examined and reviewed the PITEX program at verification. The Department also examined the Mexican government's audits of Camesa's imports of wire rod, consumption of steel wire rod, and subsequent exports of wire rope. We verified that Camesa conformed to the requirements of the PITEX program, which requires that exports be sufficient to account for the drawback claimed.

The Department agrees with Camesa that it has also met the second prong. After taking into consideration the variety of products Camesa exported—including exports of steel wire, steel wire strand, and electro-mechanical cable—Camesa's total exports were sufficient to account for the quantity of steel wire rod imported. It should also be noted that the Court of International Trade has consistently held that there is no requirement that specific inputs be traced from importation through exportation before allowing drawback on duties paid. *See Far East Machinery,* 12 CIT at 975.

Comment 5: The Accuracy of Camesa's Duty Drawback Claims

The petitioner contends that the Department must reject Camesa's claimed adjustment for duty drawback since the Department was unable to verify the information provided in the questionnaire response. The petitioner claims that Camesa, by basing the reported duty drawback adjustment on only one of many imports of steel wire rod, attempted to obtain the highest possible adjustment by selectively supplying the Department with certain information, while withholding other, less advantageous, information. Therefore, the petitioner argues, as adverse facts available, the Department must reject Camesa's claim for a duty drawback adjustment in its entirety.

Camesa argues that the Department should use verified information, and not ''adverse inferences'' to correct what it claims was a minor ''error'' in the reported duty drawback found during verification. Camesa claims that the employee responsible for providing the duty drawback information did not explain that the information was based on a single import of wire rod. At verification, the Department reviewed the documents for all of Camesa's purchases of imported rod during the review period. Camesa claims the Department did not find discrepancies with respect to the one invoice that was reported. Camesa further contends that, at verification, it successfully demonstrated the accuracy of the information it had submitted. Camesa claims that the duty drawback rate that it submitted was not unreasonable, since it is very close to the rates obtained for other imports which occurred at the beginning and the middle of the POR. Therefore, Camesa argues, since the verification report did not identify any discrepancies in the information reported in the questionnaire response, the Department should base Camesa's duty drawback adjustment for the final results of review on verified information, rather than on adverse facts available.

DOC Position

We agree with the petitioner that Camesa failed to use all of the appropriate information available to it in calculating its claimed adjustment for duty drawback. The Department's verification established that Camesa used only one of many imports of steel wire rod as the basis for the claimed adjustment, yet reported it as an average price for imported rod during the POR. In addition, Camesa was not able to explain the reason for the reporting error at verification. (*See Report of the Sales and Cost Verification of Aceros Camesa S.A. de C.V. (Camesa) in the First Administrative Review of the antidumping Duty Order on Steel Wire Rope from Mexico,* March 31, 1998, pages 12 and 13.) In fact, Camesa's explanation of this ''minor'' error is made for the first time in its case brief. Consequently, in the preliminary results of review, we concluded that Camesa overreported the amount of the duty drawback and we made an adjustment based on adverse inferences. Since there have been no changes in material fact since the preliminary results of this review, we have continued to allow an adjustment for duty drawback in the final results of this review and to make an adjustment to starting price in the United States using the smallest per-unit amount of duty drawback calculated for any invoice of steel wire rod purchased during the POR.

Comment 6: Rescission of the Department's Decision to Initiate the Sales Below Cost Investigation

Camesa contends that the Department should rescind its decision to initiate a sales-below-cost investigation in this review. Camesa claims that the petitioner's sales-below-cost allegation failed to include the net gain on monetary position recorded on Camesa's financial statements, thereby overstating net financial expense and the cost of production (COP). Camesa further contends that if the petitioner had properly included the net gain on monetary position in its calculations, all of the home-market sales identified by the petitioner would have been made above cost, and the allegation would not have been made. Therefore, Camesa argues, the petitioner's allegation should be rejected and the sales-below-cost investigation should be rescinded.

The petitioner contends that the Department's decision to initiate the investigation was proper in all respects and in accord with the Department's standards. The petitioner further states that it presented the Department with more than sufficient grounds to proceed with an investigation. And, since the petitioner's allegation otherwise met the legal criteria for initiation of a COP investigation, the Department's decision to initiate a COP investigation was fully in accord with the controlling statutory standard and legal precedent. Therefore, the petitioner contends, the Department must reject Camesa's argument for rescission of the initiation of the COP investigation.

DOC Position

We agree with the petitioner. The Department considered Camesa's arguments and rejected them on two previous occasions. Camesa originally presented this argument in its letter to the Department on October 1, 1997 arguing that the petitioner failed to include net gain on monetary position in its calculation of net financial expense. Nevertheless, at the time of the decision to initiate a sales-below-cost investigation, the Department determined that Camesa did not sufficiently substantiate its case for this adjustment for the record for the Department to be able to determine whether Camesa's proposed adjustment concerning the monetary position was appropriate. In the Department's October 6, 1997 decision memo, *Steel Wire Rope from Mexico: Whether to Initiate a Sales Below Cost Investigation,* the Department stated on page 3, ''since Camesa's financial statements do not specify what the interest expenses relate to, we believe that we do not have enough information on the record to determine whether such an adjustment is appropriate in this case.'' On October 19, 1997, Camesa again requested the Department to rescind its decision to initiate a sales-below-cost investigation, presenting for a second time the arguments set forth in its October 1, 1997 letter. The request was considered and denied in a letter from the Department to Camesa on October 23, 1997. Furthermore, the Department found the petitioner's allegation to be representative of the broader range of the home market sales than were actually used to determine NV in the review.

Therefore, the Department initiated a sales-below-cost investigation, because at the time the decision was made, the Department had ''reasonable grounds'' to believe that sales of foreign like product under consideration for the determination of normal value had been made at prices which represent less than the cost of production. *See* Section 773(b)(1) of the Act. The Department will not revisit the issue of initiation at this time.

Comment 7: Disregarding Sales Below Cost

Camesa claims that the Department erroneously conducted its cost test on all home market sales of the foreign like product reported to the Department. Camesa points out that it made only one sale of steel wire rope to the United States during the POR, and that the Department based its preliminary results of review on home market sales of the identical product. Therefore, Camesa points out that section 773(b)(1) of the Act requires the Department to exclude sales below cost which have been made within an extended period of time in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time. Camesa notes that section 773(b)(2)(C) states that ''sales made below cost of production have been made in substantial quantities if —(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or (ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.'' Therefore, Camesa concludes, the Department cannot apply the cost test to sales of similar merchandise or disregard them

from its analysis, since only sales of identical merchandise should have been the relevant universe of sales under consideration for the determination of NV.

Camesa notes that this issue does not bear any significance for calculation of NV in the current review, since the Department did not disregard any of the home-market sales of the product that were used as the basis for NV. However, Camesa notes that it may have a significance in future reviews since the Department's questionnaire instructs respondents to respond to the cost of production and CV sections of the questionnaire only if any of the respondent's sales were disregarded as below cost in the prior review. Therefore, Camesa requests the Department to specifically state that none of Camesa's home market sales were disregarded as below cost in the current review.

The petitioner contends that Camesa is incorrect in its assertion that the sales of similar merchandise in the home market are not under consideration for the determination of NV. It further notes that all sales of merchandise covered by the scope of the order remain candidates for the determination of NV, even if the NV for the final results of this review continues to be based solely on the identical home market product. The petitioner argues that, since the Department acted in accordance with law in its preliminary results of review, it must maintain this analysis for purposes of the final results of this review.

DOC Position

We disagree with Camesa's interpretation of section 773(b)(1) of the Act and that we should find that no below-cost-sales were disregarded. The premise underlying Camesa's argument—that the sales-below-cost analysis is done after the Department does its matching analysis—is inconsistent with the current court decision in *CEMEX*.

The Department's practice following the *CEMEX* decision is to conduct a sales-below-cost test prior to conducting the matching analysis. The Court in *CEMEX* held that ''A determination of the dumping margin cannot be made if sales of a product which are to be relied upon in reaching foreign market value are not in the ordinary course of trade. [citations omitted]. Therefore, the *initial consideration* for Commerce is whether, under section 1677b(a)(1), the sales are 'in the usual commercial quantities and in the ordinary course of trade. 19 U.S.C. 1677b(a)(1).' '' CEMEX, 133 F.3d at 903 (emphasis added).

The Court in *CEMEX* explicitly held that sales below cost are not in the ''ordinary course of trade.'' Citing *Mantex* v. *United States,* 841 F. Supp. 1290, CIT, 1993, the Court in *CEMEX* held that '' '[a] profit level comparison is probative of the economic reality' of the sales [citation omitted] and therefore the disparity in profit margins is indicative of sales that were not in the ordinary course of trade.'' *CEMEX*, 133 F.3d at 900 citing *Mantex,* 841 F.Supp. at 1308.

Sales that are below cost (not in the ordinary course of trade) are then disregarded and subsequently the matching analysis is done on remaining sales. ''Commerce should then examine the next available class of merchandise * * * to determine if it matches any of the * * * categories of 'such or similar merchandise.' '' *CEMEX*, 133 F.3d at 903.

Therefore, Camesa's argument that only identical merchandise should have been subjected to the sales-below-cost analysis is contrary to the Court's mandate in *CEMEX*. Camesa incorrectly takes a very narrow interpretation of the phrase ''under consideration for the determination of normal value'' to include only those identical sales that were actually used in calculating normal value. The Department considers all home market sales reported to be ''under consideration for the determination of normal value.'' The fact that certain sales were later disregarded for being below cost or non-identical matches, when identical matches were available, does not alter the fact that initially all reported home market sales were ''under consideration for the determination of normal value.''

Accordingly, based on the cost test, the Department disregarded certain of Camesa's below-cost home-market sales in the current review.

Comment 8: Home Market Credit

Camesa maintains that the Department should calculate home-market credit expenses based on the actual short-term interest rate available to Camesa, rather than the published interbank equilibrium rate (abbreviated TIIE in Spanish), used in the preliminary results of review. Camesa notes that the TIIE rate is an interbank rate which is available for transactions between banks and not intended for corporate customers. Therefore, Camesa contends, the Department should calculate the credit expense for Camesa's home-market sales based on the evidence on the record concerning the actual interest rates Camesa would have paid if it had short-term borrowings during the review period.

The petitioner contends that the Department properly used the TIIE interest rate to determine home market credit expense during this review. The petitioner states that since Camesa did not have actual borrowings in the home market during the period of the review, an interest rate must be imputed. The petitioner contends that the interest rates proposed by Camesa are hypothetical and speculative, cannot be verified and cannot serve as the basis for a circumstance of a sale adjustment. Therefore, the petitioner contends, the Department should continue to use the TIIE rate in its final results of review.

DOC Position

The Department's preference for determining an interest rate for imputed credit expenses when the respondent does not have any short-term loans is set forth in Import Administration Policy Bulletin 98.2 (Policy Bulletin 98.2). Policy Bulletin 98.2 states, ''For foreign currency transactions, we will establish interest rates on a case-by-case basis using publicly available information, with a preference for published average short-term lending rates.'' The Bulletin also states that any short-term interest rates used by the Department should meet three criteria: '' * * * it should be reasonable, readily obtainable, and representative of 'usual commercial behavior.' '' We were not able to identify any published sources of short-term lending rates in Mexico during the period of review. However, we recognize that the information on the record concerning the minimum interest rate that Camesa could have obtained from commercial banks, if it had had short-term borrowings during the period of review, satisfied the above criteria. Furthermore, we agree with Camesa that the TIIE rate is an interbank rate that is applied only to transactions between banks and understates the rates available to corporate customers and is not appropriate for calculating imputed credit expenses in this review. Therefore, for these final results we have imputed credit expenses using the information on the record. (*See,* Calculations Memo for the Final Results of Review, dated August 21, 1998.)

Comment 9: The Timeliness of the Filing of the Public Version of Camesa's Case Brief

The petitioner argues that by submitting the public version of its case brief to the Department on May 11, 1998, Camesa missed the public filing deadline date of May 8, 1998. The petitioner contends that due to the untimely filing, the Department must reject Camesa's filing according to the

Department's regulation at section 353.38(a) which states that ''[T]he Secretary will return to the submitter * * * any written argument submitted after the time limits specified in this section or by the Secretary.'' The petitioner further contends that to do otherwise not only works to the prejudice of the petitioner, which operated under the established time frames, but provides license for Camesa, and parties to other proceedings before the Department, to flout the Department's mandatory requirements. The petitioner further argues that, at the least, the Department must reject Camesa's claim for confidentiality regarding its case brief since it failed to perfect this claim by filing a public version of the case brief by the close of the next business day. Camesa did not comment on this issue.

DOC Position

Camesa attempted to file its business proprietary version of its case brief on May 7, 1998. Details of Camesa's attempt to file its case brief in a timely manner are outlined in Sherman & Sterling's letter to the Honorable William Daley dated May 8, 1998 and accompanying affidavit of its courier. The Department accepted Camesa's explanation and effectively gave Camesa an extension of one day by accepting its case brief on May 8, 1998. *See* 353.38(c)(1). Therefore, the public version of Camesa's case brief was due on the next business day, which in this case was on May 11, 1998. *See* 353.32(b). Camesa timely filed its public version on May 11, 1998.

Final Results of the Review

As a result of our review of the comments, we determine that the following dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Aceros Camesa, S.A. de C.V.	3/1/96–2/28/97	0.00

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. We will instruct customs to liquidate the entries made during the POR without regard to antidumping duties since no margins were determined to exist in this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Further, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of steel wire rope from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Camesa will be the rate stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation of sale at less than fair value (LTFV), but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 111.68 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 771(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 353.22.

Dated: August 27, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23670 Filed 9–1–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–008]

Color Television Receivers From the Republic of Korea; Final Results of Changed Circumstances Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of affirmative final determination of changed circumstances antidumping duty review and revocation of order in part.

SUMMARY: This changed circumstances review covers one manufacturer, Samsung Electronics Corporation. The International Brotherhood of Electrical Workers; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (AFL–CIO); and the Industrial Union Department (AFL–CIO) are collectively the ''petitioners.''

On December 31, 1997, the Department of Commerce published the preliminary results of the changed circumstances review of the antidumping duty order on color television receivers from the Republic of Korea. At that time, the Department preliminarily determined to partially revoke this antidumping duty order with respect to Samsung Electronics Corporation. Based on our analysis of the record evidence, including interested party comments, we have determined that changed circumstances warrant revocation of the antidumping duty order on color television receivers from the Republic of Korea, as it applies to Samsung Electronics Corporation.

EFFECTIVE DATE: September 2, 1998.